

Remarks

With the addition of claim 14, claims 1-14 are now pending in the above-identified application and are submitted for the Examiner's reconsideration.

The Examiner objected to the specification for failing to provide support for the subject matter of original claim 7. In view of the amendment made to the specification, withdrawal of this objection is respectfully requested.

Claims 1-6, 8, 9, and 11-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by PCT Publication No. WO94/10553 to Singh ("Singh"). Applicants respectfully disagree with this rejection because Singh does not identically teach all of the limitations recited in the claims. Claim 1 recites a sensitive layer that contains particles. In order to demonstrate that Singh meets this limitation, the Examiner states that "a sensitive layer formed of glass spheres coated with an analyte sensitive dye" is taught by Singh, and he also relies on claim 8 of Singh, which recites glass particles of a particular size. First, the sensitive layer in Singh does not contain particles; it contains a water-soluble indicator as recited in claim 1 of Singh. Moreover, this reliance by the Examiner on claim 8 is irrelevant to the sensitive layer recited in claim 1 of the present application because claim 8 of Singh pertains to the composition of a support for the sensitive layer, not to that of the sensitive layer itself. Thus, even though Singh teaches that the sensitive layer may be deposited on a support that itself contains particles, that is not a teaching of a sensitive layer that contains particles. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

As for claims 2-6, 8, 9, and 11-13, Applicants submit that these claims are patentable for at least the same reasons given in support of the patentability of claim 1.

Notwithstanding the above reasons, Applicants submit the following additional reasons in support of the patentability of claims 2, 3, 5, and 12, all of which have been rewritten in independent form.

As to claim 2, Applicants submit that no optical gas sensor for determining a gas component in air can be inferred from Singh. The measuring systems described there are used to determine the carbon dioxide and the oxygen content and the pH-values of blood.

The materials recited in claim 3 are likewise not inferable from Singh. In Singh, only PMMA is mentioned as material for a substrate, but no PMMA particles are described there.

Claim 5 also is patentable over Singh. The particles described in Singh are indeed porous, but not hollow. A hollow particle is to be understood as a particle having a single surface and an extended interior that is filled with an at least different type of material or a gas. Such particles are not described in Singh.

As to claim 12, the Examiner refers not only to Singh, but also to U.S. Patent No. 5,335,305 ("the '305 reference"). It is said to be described there that a substrate used as carrier for a sensitive layer includes a detector. Applicants cannot quite understand this, since in the '305 reference, in Figure 16, a sensor unit 100 is provided that is spatially separated from a sensor interface unit 120, these being connected to one another by means of a fiberglass connection. Sensor interface 120 thus is by no means a substrate for a sensitive layer.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh. Applicants submit that claim 10 is patentable for at least the same reasons given in support of the patentability of claim 1.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh in view of United States Patent No. 5,511,547 to Markle et al. ("Markle"). Since Markle does not overcome the deficiencies noted above with respect to Singh, Applicants submit that claim 7 is patentable for at least the same reasons given in support of the patentability of claim 1.

Applicants have added new claim 14, which recites that the particles of the sensitive layer are water-insoluble. Support for this new claim is found from the statement in the specification at page 2, line 31, to page 3, line 1. Since the substances listed in that portion of the specification are water-insoluble, support exists for this claim. This new claim is in contrast to the sensitive layer in Singh, which is a water-soluble material, as recited in the claim thereof.

The present invention is new, non-obvious, and useful. Reconsideration and allowance of the claims are respectfully requested.

Dated: 11/3/03

Respectfully submitted,
By: Richard L. Mayer (Reg. No. 41,172)
By: Richard L. Mayer
Richard L. Mayer
Reg. No. 22,490

KENYON & KENYON
One Broadway
New York, NY 10004
(212) 425-7200